

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BOROUGH OF UPPER SADDLE RIVER NEW JERSEY,
KAREN MILLER, ROY OSTROM, MARIA FLORIO
MARK RUFFOLO and LINDA McDONALD,
Plaintiffs,

-against-

07CIV0109

ROCKLAND COUNTY SEWER DISTRICT # 1,

Defendant.

-----X
October 3, 2012
40 Matthews Street
Goshen, New York
10:14 a.m.

EXAMINATION BEFORE TRIAL OF EXPERT WITNESS
DR. BRUCE A. BELL
Held in connection with the above captioned
matter on the 3rd day of October 2012
pursuant to notice held at the offices of
Burke, Mile & Golden, LLP, Goshen, New York
before a Notary Public of the State of
New York.

CUMMINGS REPORTING & VIDEO SERVICES
138 Main Street
Post Office Box 682
Goshen, New York 10924
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ORIGINAL

A P P E A R A N C E S:

FOR PLAINTIFFS:

BURKE, MIELE & GOLDEN, ESQS.

40 Matthews Street

Suite 209

Goshen, New York 10924

BY: MICHAEL K. BURKE, ESQ.

FOR DEFENDANT:

THE LAW OFFICES OF PETER ADELMAN

95 Sixth Avenue

Brooklyn, New York 11217

BY: PETER ADELMAN, ESQ.

Robert J. Cummings, Jr.
Court Reporter

(Expert report of Bruce A. Bell marked Plaintiff's
Exhibit 1 for identification.)

B-R-U-C-E A. B-E-L-L, after first having been duly
sworn by Robert J. Cummings, Jr., a Notary Public
for the State of New York, was examined and
testified as follows:

COURT REPORTER: Would you please state your
name and address for the record?

THE WITNESS: Bruce A. Bell. The business
address is 307 Museum Village Road, Monroe, New
York 10950.

EXAMINATION BY

MR. BURKE:

Q Good morning, Doctor Bell.

A Good morning.

Q My name is Michael Burke. I am the attorney
for the Borough of Upper Saddle River and the individual
plaintiffs.

As you know, you are here for a deposition
today as an expert witness on behalf of the Rockland County
Sewer District. I am just going to go through some basic
ground rules for depositions. I know you have been deposed
before, but I just want to make sure that we have an

- BRUCE A. BELL -

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understanding.

First instruction is that all answers have to be verbal. You can't give head nods or shakes, otherwise the reporter can't take down your response; do you understand?

A Yes.

Q The other instruction is that if you answer the question, it's assumed that you understood the question as posed.

If there is a pending question, please answer it. If you need to take a break at any time, that's fine, just let me know, as long as the question that's been posed has been answered; do you understand?

A Fine.

Q Doctor Bell, I know you prepared several reports for this litigation. The first report you prepared was a July 23rd, 2012 expert report in response to the borough's expert, Dennis Lindsay, correct?

A Yes.

Q I have had now previously marked as Plaintiff's Exhibit 1 your expert report and in it you list appendices that has your CV and your prior cases that you have testified, correct?

A Yes.

1 - BRUCE A. BELL -

2 cross connection removal. And I'm sure, because there
3 always is, a bunch of studies in there.

4 Q Do you know if any of the remedies in that
5 case involved comminutors?

6 A They do not.

7 Q Do you know if that system used comminutors at
8 all?

9 A I didn't get to every pump station in the
10 system, but I know they used them at the main treatment
11 plants, which is Milwaukee's treatment plant.

12 Q So that I am using the terminology correct,
13 comminutors are like grinders, is that correct?

14 A Yes.

15 Q And they grind up what is known in the
16 industry as rags, is that right?

17 A They will grind up rags, as used in the common
18 vernacular. They won't grind up rags in the sense that
19 formation on a rotating element, the impeller of a pump or
20 mixers and tags and so forth. Formally in the industry
21 they are either rags or mop heads, and what they are is
22 very fine pieces of paper, hair, and I think hair is
23 probably the most common binder in them. The rotating
24 element picks them up and in a sense weaves them, so that
25 you wind up with something that looks like a rag wrapped

1 - BRUCE A. BELL -

2 around the impeller, or looks like a mop head because it
3 will have strings hanging out of it.

4 A comminutor won't help at all with that
5 because it's already passed the comminutor and it's much
6 too small to be cut up by the comminutor.

7 Q Okay.

8 A On the other hand, a comminutor will chew up a
9 --

10 Q A larger --

11 A -- a shop rag.

12 Q Before we jump back. Just as to rags, rags
13 would include feminine products as well, correct?

14 A They would include -- they would not pick up
15 an in tact feminine product, but they would pick up a
16 shredded feminine product. It's a weaving action.

17 Q Just taking it a step back as to what people
18 flush into their sanitary sewer system based on your years
19 of experience - people would flush down toilet paper,
20 correct?

21 A Right.

22 Q Obviously sewage?

23 A Right.

24 Q There would also be feminine products,
25 correct?

- BRUCE A. BELL -

A Yes.

MR. ADELMAN: Could I ask the witness to wait a moment before you answer? Give me a chance to object, if necessary.

THE WITNESS: Sure.

MR. ADELMAN: Thank you.

Q And the feminine products, some of them would have plastic applicators, is that correct?

A Yes.

Q And then also some people would flush down wipes, correct?

A Yes.

Q Flush down perhaps prophylactics?

A Usually.

Q And in prophylactics, I am talking about condoms?

A Yes.

Q And then also people from time to time would flush down pharmaceuticals, correct?

A Yes.

Q And all of these would enter into the waste water treatment plant, correct?

A Yes.

Q And first they enter into the pipes, then make

1 - BRUCE A. BELL -

2 their way into the treatment plant, hopefully, correct?

3 A Yes.

4 Q And if they don't make it to the treatment
5 plant, such as in this case, there could be sanitary sewer
6 overflows, correct?

7 A Yes.

8 Q And when these sanitary sewer overflows occur,
9 those materials that have been flushed down people's
10 toilets are exposed and can flow down into a river,
11 correct?

12 MR. ADELMAN: Objection to form.

13 A With some caveats, it depends on the flow,
14 depends on how the overflow is occurring. For example, if
15 it's coming out of the pick holes on a manhole, most of
16 those things wouldn't fit through it, so you wouldn't get
17 that out. Whether the larger materials, like condoms, that
18 hang up easily on almost anything, plastic applicators
19 things of that nature, would actually make it to a river
20 would depend on the distance of the flow, the velocity of
21 the flow, the slope of the land. It's possible. It's
22 surely not a sure thing.

23 Q You just went through a bunch of variables and
24 caveats. If the point source is in close proximity to the
25 waterbody and there is a sanitary sewer overflow, there is

1 - BRUCE A. BELL -

2 a greater possibility that what's contained in the sewer
3 system would reach the waterbody, correct?

4 MR. ADELMAN: Objection to form.

5 A Not necessarily. It depends on slope, it
6 depends on velocity of flow. Distance is a factor, but not
7 the only factor.

8 Q And so, again, velocity, you are also looking
9 at volume, the number of gallons that are coming out,
10 correct?

11 A Not necessarily.

12 Q You mentioned condoms hanging up on things, as
13 well as some of the other materials or products that are
14 flushed down the toilet. By "hanging up on things" you are
15 talking about hanging up on grass, river beds, is that what
16 we are talking about here?

17 A We are talking about hanging up on bushes,
18 grass, limbs, curbs, you know, trees, if it hits the trunk,
19 you know, whatever is in the way that stays still and it
20 can hang up on.

21 Q And it can also hang up on rocks or twigs or
22 limbs in a river as well, correct?

23 A If it gets there, yes.

24 Q As to the condoms and other plastic
25 applicators, would you agree that those take a far longer

1 - BRUCE A. BELL -

2 time to biodegrade?

3 MR. ADELMAN: Objection to form.

4 MR. BURKE: Let me rephrase that.

5 Q would you agree that condoms take a long time
6 to biodegrade?

7 MR. ADELMAN: Objection to form.

8 A Actually, condoms, I honestly don't know the
9 biodegradation rate of that material.

10 Q Fair enough. But they are not something that
11 degrade as quickly as, say, toilet paper, correct?

12 A You know, I don't know about paper. Paper
13 takes a long time to biodegrade.

14 Q How about plastic?

15 A Most of the plastics I'm aware of, other than
16 some of the new biodegradable plastics, they take a along
17 time to biodegrade.

18 Q Can you quantify that I - how long it takes
19 for plastic to biodegrade?

20 A It depends on the plastic composition and the
21 exposure to UV light. They don't really biodegrade. They
22 are degraded. Mostly the older plastics that weren't made
23 like these to be biodegradable. I think these bottles
24 (indicating) are made of biodegradable plastic today. The
25 older plastics degrade due to ultraviolet radiation from

- BRUCE A. BELL -

sunlight.

Q Do you have any, or have you ever looked at the biodegradability of plastic applicators for feminine products?

A No, I don't know what plastic they are made out of. But, again, traditional plastics take a long time in the environment, but quantifying that is almost impossible without knowing the exact plastic and the UV light exposure.

Q I understand. Do you have a general sense of how long a long time is?

A It's certainly more than months. Beyond that, I don't know.

Q Do you believe it would be more than years?

A For some plastics in some conditions, I am sure it would be.

MR. ADELMAN: I would urge the witness not to speculate.

MR. BURKE: If we could just limit the objections to form, and not instruct the witness on how to answer.

MR. ADELMAN: Fine with me.

MR. BURKE: Thank you.

Q Doctor Bell, do you know if you still have the

1 - BRUCE A. BELL -

2 A They did.

3 Q Did they continue to occur, if you know?

4 A I assumed they did, but I don't know.

5 Q Was there any kind of monetary settlement as
6 well in that case, if you know?

7 A I'm sure there was.

8 Q Do you have any recollection as to the amount
9 of that or not?

10 A No.

11 Q Do you know if the consent decree included any
12 provisions addressing spill that occurred after the consent
13 decree was entered in that case?

14 A It did not.

15 Q Do you know why not?

16 A No, I wasn't part of negotiating that part of
17 the consent decree.

18 Q Is it fair to say that every subsequent
19 sanitary sewer overflow would be a further violation of the
20 SPDES permit in that case --

21 MR. ADELMAN: Objection to form.

22 Q -- subsequent to the entry of the consent
23 decree?

24 MR. ADELMAN: Objection to form.

25 A I hate to play lawyer, so I won't. That's

1 - BRUCE A. BELL -

2 really a legal determination.

3 Q well, let me break it down a little further.

4 would you agree that sanitary sewer overflows
5 are violations of SPDES permits?

6 A In general, yes.

7 Q So, if the consent decree did not cover
8 sanitary sewer overflows that occurred after the entry of
9 the consent decree, in general those sanitary sewer
10 overflows would be a violation of the SPDES permit,
11 correct?

12 MR. ADELMAN: Objection to form.

13 A The reason I don't want to play lawyer is,
14 that consent decree had a design storm in it, which is
15 necessary, of course, to be able to design a remedy for a
16 sewer system. And whether a -- in terms of a consent
17 decree, a post consent decree date violation that occurred
18 in rainstorm greater than design rainstorm, would not be a
19 violation of the consent decree. Whether it's
20 theoretically and practically a violation of the SPDES
21 permit is something the EPA, to my knowledge, has wrestled
22 with since the '90's and hasn't been able to come up with
23 an answer, including using a federal citizens advisory
24 committee, or a federal advisory committee, to try and deal
25 with that issue. And they simply have been unable to

1 - BRUCE A. BELL -

2 resolve it.

3 Q To this date?

4 A To this date.

5 Q And they are unable to decide whether
6 subsequent sanitary sewer overflows after the entry of a
7 consent decree violates a SPDES permit, is that correct?

8 MR. ADELMAN: Objection to form.

9 A What they are unable to deal with, have been
10 unable to deal with, is two things; the federal regulations
11 do not define the size of a design storm, and they were
12 trying to get agreement on that and never could, so while
13 in a consent decree you could say if it's bigger than this
14 storm, it's not a violation. Whether you can do that under
15 federal laws, apparently is a question EPA couldn't answer.
16 The other is a general recognition that preventing all
17 sanitary sewer overflows is a practical impossibility. No
18 matter how foolproof you try to make systems, fools are
19 more ingenious than you think.

20 Q I didn't hear that last part.

21 A No matter how foolproof you try to make
22 something, fools are much more ingenious than you think.
23 There are things beyond the control of a utility or a city.
24 EPA recognizes that. The states recognize that. The only
25 way they have been able to deal with it as a practical

1 - BRUCE A. BELL -

2 matter is their discretion and when to enforce.

3 What EPA does in their consent decrees is set
4 a finite time frame and say these actions are intended to
5 reduce or eliminate SSO's towards the goal of the Clean
6 Water Act. But they do not and have been unable to pass a
7 regulation that says what's beyond the control of the
8 operator.

9 Q Let's take a step back now. You talked about
10 the design storm?

11 A Yes.

12 Q In this case they proposed, "they" meaning the
13 Rockland County Sewer District, a design storm of 3 inches
14 within 24 hours, is that correct?

15 A Yes.

16 Q So is it fair to say that a storm of less than
17 3 inches in 24 hours which results in a sanitary sewer
18 overflow, would be a violation of their SPDES permit?

19 A Not necessarily.

20 Q Okay. well, in your prior testimony you said
21 that they come up with a design storm and a limit on the
22 design storm, correct?

23 A Yes.

24 Q And you talked about if it exceeded the design
25 storm limits, that then it would not be a violation of the

1 - BRUCE A. BELL -

2 SPDES permit, correct?

3 A Yes.

4 Q So, wouldn't the inverse of that be true, that
5 if it was less than the design storm that it would be a
6 violation of the SPDES permit?

7 A Yes, but you have to understand what a design
8 storm is. A design storm is not solely the amount of rain
9 that falls in 24 hours. We talked about it in shorthand
10 that way. But there are two kinds of storms that can
11 affect, and this is true not only for sanitary sewer
12 overflows, but it's true for storm water draining anywhere.
13 There is two different kinds of storms - one of which will
14 drive the size of what you need and what facilities you
15 need. One is the total rainfall over a relatively long
16 period of time, in that case a day in storm, sometimes they
17 use longer durations. And then there is short-term intense
18 storm, you know, a downpour from a thunderstorm, which can
19 put a lot of water into the storm sewer, or a sanitary
20 sewer, if you've got inflow in a very short period of time.

21 The design storm that is used typically in
22 this country is a design storm derived by, I believe it was
23 the geological survey, USGS, that storm is a synthetic
24 storm, it's not meant to be a real storm, that combines
25 those two. So, it's a storm that has a total of so many

1 - BRUCE A. BELL -

2 Q And on all of these spills listed on the day
3 of the event, none of them exceed 3 inches of rainfall in a
4 24 hour period, do they?

5 A Actually, one does.

6 Q which one does?

7 A 8/29/11.

8 Q Beg your pardon. That one shows 7.2 inches of
9 rain, right?

10 A Yes.

11 Q But all the others, and I think there is
12 thirty-four listed here?

13 A Yes.

14 Q Of the other thirty-three, none of them exceed
15 3 inches, right?

16 A None of them -- I don't know off the top of my
17 head whether or not any of them actually do exceed 3
18 inches. Everything except the last column on the right in
19 this table and the highlighting in this table is Mr.
20 Lindsay's table. And I disagree with where he used -- the
21 rain gauge he used. And you can't tell from this whether
22 you had rainfall in excess of 3 inches in a 24 hour period.

23 Q The rain gauge used, do you recall what rain
24 gauge that he used?

25 A Midland Park.

1 - BRUCE A. BELL -

2 Q Isn't that the same one you used as well?

3 A No.

4 Q What did you use?

5 A We used the United Water rain gauge in Spring
6 Valley, which is closer, and in New York, and is the same
7 rain gauge that the district uses --

8 Q Do you recall --

9 A -- for that area of the district. They use
10 United Water gauges for other areas of the district that
11 are closer to other areas of the district.

12 Q Do you have that United Water rain gauge that
13 you used?

14 A I have data from it. I don't have the gauge.

15 Q I am sorry, I meant the data. That's an
16 imprecise question.

17 I am going to ask you to produce a copy of
18 that United Water rain gauge data that you compiled.

19 Do you have any recollection of United Water
20 rain gauge data which would show, other than perhaps that
21 August 29, 2011 date that the rainfall exceeded 3 inches in
22 a 24 hours period?

23 A Neither of the gauges are going to tell you
24 that directly because both of those gauges are 24 hour
25 records. So, if I have a rainstorm that starts at 8:00 at

1 - BRUCE A. BELL -

2 night and ends 8:00 the next night, I don't know whether I
3 had 24 hours, you know --

4 Q In a 24 hour period --

5 A -- you've got to use hourly rain data, which I
6 didn't do because I was merely commenting on what Mr.
7 Lindsay did.

8 Q Does United Water provide hourly rain data?

9 A If they do, I don't have it. I have seen it
10 as daily written data.

11 Q And the daily rain data by United water, did
12 you compare it to the daily rain data that he provided from
13 Midland Park?

14 A Only in a general way, and there is some
15 significant differences, but I can't remember what they
16 are.

17 Q Okay. Did you include in your report any of
18 those significant differences between United water rain
19 data and the Midland Park rain data?

20 A No.

21 Q In this chart there is a number of dry weather
22 events, correct?

23 A There is a number of events that Mr. Lindsay
24 defined as dry. There are, I'm trying to see if there are
25 any that surely are dry by his definition. I mean there

1 - BRUCE A. BELL -

2 are some he lists as dry, with his definition. There are
3 some -- one that it's clear is dry by any definition.
4 There are a number in which you can't tell because the
5 Midland Park data has data gaps in it.

6 Q The sewer district prepares reports for the
7 DEC regarding each spill, correct?

8 A Yes.

9 Q And the DEC also maintains reports regarding
10 spills, correct?

11 A Yes.

12 Q All right. And the Rockland County Sewer
13 District would designate whether it's a wet weather event
14 or a dry weather event, correct?

15 A I would have to look at the letters, but my
16 recollection is they will attribute a cause to the spill.
17 And if they believe it came from excess rainfall, I think
18 they will designate it as rainfall derived inflow, they
19 will report that. If they believed it was a failure of a
20 piece of equipment, they will report that. If they feel it
21 is a blockage due to something in the sewer, they will
22 report that. I don't recall that they actually designate
23 spills as wet or dry.

24 Q Do you recall reviewing any data where Dianne
25 Phillips provided information to the DEC where she

- BRUCE A. BELL -

identified dry weather spills versus wet weather spills?

A I believe it was in the dry weather report. I didn't go back and compare them to the actual spill reports for that time. And I believe that report she provided him with was, again, it's memory, I have to look at the report, was basically the spills named in the consent decree.

Q They prepared a wet weather abatement report, correct?

A Yes.

MR. ADELMAN: Objection.

Q "They" meaning the sewer district. And they also prepared a dry weather abatement report, correct?

A Yeah, district's consultant did the wet weather report. The district did the dry weather report.

Q Now, turning back to the chart that you commented on, Mr. Lindsay's report, the first entry, the second entry, beg your pardon. The first entry is the Cherry Lane pump station, the second one is 55 South Monsey Road pump station?

A Right.

Q And it lists as a dry event, it states principle reason was equipment failure?

A Right.

Q And then it says, "DEC reported gallon

- BRUCE A. BELL -

1 spilled, 1500"?

2 A Yes.

3 Q Now, the report of gallon spilled, that's
4 what's reported to the DEC from the Rockland County Sewer
5 District, right?
6

7 A Or if someone else reports a spill to the DEC,
8 that's what they have in their database, and it's normally
9 based on what the district puts in.

10 Q So, if the district says that the amount of
11 the spill is unknown to the DEC, the DEC would write the
12 amount of the spill was unknown, right?

13 A Correct.

14 Q It's the district that is obligated to report
15 the amount of the spill to the DEC, is that correct?

16 MR. ADELMAN: Objection to form.

17 A Well, the district is required to report
18 spills into the database in their jurisdiction. And they
19 are required, when able, to estimate the volume of the
20 spill. It's not always possible to estimate the volume of
21 the spill, if it's reported to them long after it has
22 occurred and it's resolved itself, I don't know a way to
23 make a reasonable estimate of what the volume was.

24 Q Well, wouldn't you be able to make a
25 reasonable estimate based on the time that you got the

1 - BRUCE A. BELL -

2 alarm that the pumps failed, or that there is an alarm that
3 there is a spill going on, to when it's abated?

4 A If you have an alarm of any kind, if someone
5 calls in and says there is water coming out of a manhole,
6 you can make an estimate of the volume of the spill based
7 on if it's just in the sewer line, get out there, you see
8 the rate which it's coming out, there are some standard
9 methods that are used in the industry to attempt to measure
10 the flow rate or estimate the flow rate. Almost everybody
11 uses the San Diego's method. If you have the time of a
12 report and you know what time you stopped it and you look
13 at it around say, we'll, okay, it's coming out at 5 gallons
14 a minute or 100 gallons a minute, whatever it is, yes, you
15 can report a reasonable estimate of the spill.

16 If you get a call at 10:00 in the morning that
17 it looks like there's manhole spill, there is debris around
18 it, you have no idea when it started. It's not flowing
19 now, so you can't make an estimate of flow rate, even if
20 you did have an idea when it was flowing. There is just no
21 way to make an estimate of the spill. You just report it
22 as unknown. I can't tell you. I don't know.

23 Q And what would also contribute to the flow
24 rate and the rate of the spill would be response time, is
25 that correct?

1 - BRUCE A. BELL -

2 A It wouldn't contribute to the rate of the
3 spill. It would contribute to volume.

4 Q Not the rate, but the volume?

5 A Right.

6 Q And by "response time" we are talking about
7 getting out there and addressing the cause of the spill?

8 A Response time in the industry is getting out
9 there and starting to address the spill. Depending on what
10 you find when you get there, you can sometimes fix it
11 immediately, sometimes it's going to take you six hours to
12 fix the problem. The only thing you really have control
13 over is the response time.

14 Q And you are able to control the response time
15 by staffing, correct?

16 A By staffing and by chain of command to get
17 people out.

18 Q During your review of documentation and
19 deposition testimony did you review any -- or isn't it a
20 fact that Rockland County Sewer District has stated to the
21 DEC on a number of times that they have staffing issues as
22 to maintenance?

23 A I don't recall.

24 MR. BURKE: I'm going to marked this as
25 Plaintiff's 3.

1 - BRUCE A. BELL -

2 (2/2/10 letter from DEC to Rockland County Sewer
3 District marked Plaintiff's Exhibit 3 for
4 identification.)

5 MR. BURKE: Why don't we take a quick break?

6 MR. ADELMAN: Yes, thank you.

7 (Recess taken. Whereupon, following which, these
8 further proceedings transpired.)

9 BY MR. BURKE:

10 Q I am showing you what's been marked as
11 Plaintiff's Exhibit 3.

12 MR. ADELMAN: Do you have a copy?

13 MR. BURKE: I'm sorry, I only made one copy of
14 the exhibits. Some of them I have two, but because
15 of volume.

16 MR. ADELMAN: If you could let me look at it
17 briefly before you ask the question?

18 MR. BURKE: That's fine.

19 (Handed to counsel.)

20 Q Doctor Bell, this is a February 2nd, 2010
21 letter from Manju Cherian of the DEC to Dianne Phillips,
22 the executive director of the Rockland County Sewer
23 District, correct?

24 A Yes.

25 Q And in the second paragraph in this letter it

1 - BRUCE A. BELL -

2 talks about, the DEC is saying to the Rockland County Sewer
3 District, "That you have informed us that there has been
4 insufficient staffing to perform pump station operations
5 and maintenance, especially during prolonged wet weather
6 events", correct?

7 A Yes.

8 MR. ADELMAN: Objection to form.

9 Q Does that refresh your recollection that the
10 Rockland County Sewer District had informed the DEC that
11 they had insufficient staffing to maintain the pump
12 stations during prolonged wet weather events?

13 A I believe what this is referring to, and I
14 can't tell you the page in Dianne Phillips' deposition, but
15 she discusses and what she said was in the event that they
16 had a prolonged control failure at a pump station, over
17 24 hours, they had insufficient staff to maintain manual
18 control over the station for over 24 hours. And that is
19 something that, in looking at the spill report letters from
20 the county or the district, that I did not see an event
21 that occurred because they needed to manually control -- or
22 that was prolonged, let's put it that way, by needing the
23 manually control pump station for over 24 hours.

24 Q In reading this letter do you agree that the
25 DEC is instructing the Rockland County Sewer District that

1 - BRUCE A. BELL -

2 they should do something to address the insufficient
3 staffing that's been reported to them?

4 MR. ADELMAN: Objection to form.

5 A I would agree it says they urge the county to
6 secure funding for these critical positions.

7 Q Do you know if the county has addressed any of
8 the maintenance, the staffing issues?

9 A I don't know if they have addressed what they
10 have done with their staffing. I do not know that they
11 have not had an SSO since, what's the date of this, since
12 early -- I think actually ever, but certainly since
13 February of 2010 that is a result of not having the staff
14 to manually operate a pump station.

15 Q I think it also has to do with staff being
16 able to respond to spills at pump stations, isn't that
17 correct as well?

18 A No. It's operation and maintenance, it's not
19 response.

20 Q All right. But maintenance would deal with
21 issues of responding to clogs and the pumps, correct?

22 A No, operation and maintenance, first of all is
23 a term of art. They lump the two together because in pump
24 stations you don't have operators and maintainers, you have
25 people who do both, so they tend to use the term as one.

1 - BRUCE A. BELL -

2 Maintenance, you know, unclogging a pump is
3 not considered maintenance. It's considered response to,
4 in the field it's considered a response to a spill. You
5 were out there responding to the spill and fixing it.
6 Maintenance is the routine, inspect the pump, make sure the
7 bearings are oiled, check all the things you need to check
8 on a pump.

9 As I recall in the 2010 report that this, I
10 think, refers to, I don't know whether the report was after
11 this meeting or before it, but in 2010 the county did look
12 at all the pump stations and provide a report. And they
13 discussed in there how they had upped their routine
14 maintenance to make sure that you were basically
15 maintaining the equipment in accordance with the
16 manufacturer's instructions to maintain the equipment.

17 Q Would maintenance of the pump station also
18 include cleaning the bar racks, if there were bar racks in
19 that pump station?

20 A If they needed cleaning.

21 Q Back to your supplemental report, which has
22 been marked as Plaintiff's Exhibit 2, in that supplemental
23 report it lists also resources affected in one column,
24 correct?

25 A Yes, it does.

1 - BRUCE A. BELL -

2 Q And it says resources affected, water
3 source/soil?

4 A Water course/soil.

5 Q Beg your pardon, water course/soil, correct?

6 A Yes.

7 Q And the first wet weather event is at Cherry
8 Lane and they list there a creek, right?

9 A Yes.

10 Q And do you know this is data that is provided
11 to the DEC on the spill reports?

12 A Depending on the source of the data, it may or
13 may not be.

14 Q Well, you are familiar with the DEC spill
15 reports, are you not?

16 A Yeah, yes, I am.

17 Q And on the DEC spill reports they list water
18 source affected, do they not?

19 A Sometimes.

20 Q Well, they have a category for it?

21 A They have a category for it, yes.

22 Q Sometimes they list it and sometimes it
23 doesn't, right?

24 A Yes.

25 Q As you testified earlier, it's typically the

1 - BRUCE A. BELL -

2 Rockland County Sewer District that's providing the
3 information regarding the spills to the DEC, is that
4 correct?

5 MR. ADELMAN: Objection to form.

6 A Yes, but I don't know offhand how the DEC does
7 it. I know how other regulatory agencies that I am
8 familiar with do it. There is an immediate report by
9 phone, which most agencies will put in their database the
10 information they have. There is a requirement, I think New
11 York is typical, it's a five day requirement that a written
12 report be provided. When that's provided, most agencies
13 update the database, correct it, correct anything, often
14 get revised spill estimates, because they have time to pull
15 flow charts and look at things, and you sometimes get, you
16 know, revised termination point of the spill, you get all
17 sorts of revisions based on time, to think about it, a
18 supervisor to actually look at the first impression and so
19 on. There are amazing inconsistencies between the New York
20 State DEC database and the actual reports filed by the
21 district.

22 Now, I don't know, and I am guessing in 2012
23 it would be really hard to find anybody who knows that in
24 2006 what the initial report said over the phone. But --

25 Q Is the report, I am sorry, are you done?

1 - BRUCE A. BELL -

2 A You know, when the written report is the
3 definitive, this is the best we can do from whomever is
4 reporting, after we have had time to think about it and
5 check what we can check, it looks like to me that in many
6 cases the DEC, what's in the spill database is whatever
7 first phone call said.

8 Q Okay. And the first phone call is coming
9 from, in most instances, a person from the Rockland County
10 Sewer District who may be out at the site?

11 MR. ADELMAN: Objection to form.

12 A It's either -- no, probably not. It's
13 probably coming from the person at the site calling back to
14 the district, and the district, somebody there, passing it
15 on.

16 Q But the source of the information is actually
17 something that's typically at the site --

18 A Yes.

19 Q -- that's reporting it to the district and
20 then the district making a call into the DEC, correct?

21 A Yes.

22 Q And moving to the next event listed on the
23 table, it's a dry weather event November 6, 2006?

24 MR. ADELMAN: November 8th.

25 Q I'm sorry, this is really small print. 55

1 - BRUCE A. BELL -

2 South Monsey, the next event. We did the Cherry Lane one.

3 MR. ADELMAN: Okay, thank you.

4 A Again it's listed as a dry weather event by
5 Mr. Lindsay. It's not my conclusion.

6 Q Okay. So, it's listed as a dry weather event.
7 Actually, all the way over in your box where it says CEA
8 comments, those are your comments, right?

9 A Yes.

10 Q And it says, "Information correct", right?

11 A Yeah. Given the information that's in this
12 table, it's correct, given a missing data point for rain on
13 the day of the spill. I can't say it's wrong.

14 Q So, he's describing it as a dry weather
15 perhaps based on the data that he had, and you can't
16 quarrel with that, right?

17 A Right.

18 Q It lists there the resource affected, Saddle
19 River, right?

20 A Yes.

21 Q As you continue down weather, wet or dry
22 event, you see the next one from Cherry Lane where there is
23 32,000 gallons estimated spilled, right?

24 A Yes.

25 Q That was a wet weather event, or at least on

1 - BRUCE A. BELL -

2 this chart it's listed as a wet weather event. And there
3 again the water source affected is the Saddle River, right?

4 A Yes.

5 Q And that continues throughout this report
6 where it lists the Saddle River as the affected water
7 source as a result of these spills?

8 MR. ADELMAN: Objection to the form.

9 A No, it lists the Saddle River sometimes. It
10 lists the soil other times.

11 Q Well, let's see how many times. We talked
12 about thirty-four spills listed, right?

13 A I haven't counted. The numbers keep changing,
14 but it's somewhere around there.

15 Q So, the approximate thirty-four spills listed,
16 fourteen of them list the Saddle River as the affected
17 water source?

18 MR. ADELMAN: Objection to the form.

19 A I thought I counted fifteen, but let's say
20 somewhere --

21 Q Let's go with your number.

22 A Somewhere just under half.

23 Q Fourteen, fifteen of them as the affected
24 water source. The others list soil, or sewer, or in one
25 instance I think it says creek?

1 - BRUCE A. BELL -

2 MR. ADELMAN: Objection to form.

3 Q Is that correct? And then one says unknown?

4 A At least two say unknown.

5 Q Okay. Do you have any idea what it means as
6 to the resource affected water source/soil as sewer what
7 that means?

8 MR. ADELMAN: Objection.

9 A No.

10 Q It doesn't seem to make sense, does it?

11 A It is, yeah, actually it does, if what is
12 happening, and it's been known to happen, is you have a
13 spill, a small spill, and this was a small spill reported,
14 you get out there in a hurry, it's hasn't gotten away from
15 the area of the manhole that it's overflowing, you drop a
16 hose in it and you pump it over to the next manhole and put
17 it right back in the sewer.

18 Q Do you know if those are occasions that
19 happened here, or you have no idea?

20 A No, I don't know. But I have seen reports
21 where that's exactly what's happened.

22 Q On the wet weather event for April 15th, 2007,
23 actually, before we get there, you have a wet weather event
24 for March 2nd, 2007, the manhole, South Monsey?

25 A Yes.

1 - BRUCE A. BELL -

2 Q There, there is 14,000 gallons estimated that
3 reached the Saddle River?

4 MR. ADELMAN: Objection to form.

5 A Well, yes, and if I'm reading the right one,
6 we are talking 3/2/07?

7 Q Yes.

8 A I wouldn't argue if it's a wet weather event
9 because the district reported it is due to rainfall derived
10 inflow. But the volume of that spill is reported as
11 75 gallons.

12 Q In a subsequent letter, right, the initial
13 report was 14,000?

14 A Yes.

15 Q And then you have the next entry, April 15,
16 2007, 754 Saddle River Road which, if you know, is that the
17 Saddle River pump station?

18 A Yes.

19 MR. ADELMAN: Objection to form.

20 Q And that has 390,000 gallons?

21 A Yes.

22 Q And there it lists the day as a .7 for the day
23 of the rainfall, correct?

24 MR. ADELMAN: Objection to form.

25 A It does.

1 - BRUCE A. BELL -

2 Q Far below the 3 inches that we are talking
3 about, right?

4 A Yes, but, number one, I don't remember off the
5 top of my head what the other data shows. And second of
6 all, you are into the same problem of that spill continued
7 for, as I recall, a while. So, whether you technically
8 started it at 11:00 at night, with 7/10ths of an inch of
9 rain that day, and the 24 hours you are dealing with is
10 carried over --

11 Q But the day of the spill it's listed as the
12 15th --

13 MR. ADELMAN: Objection to the form.

14 Q -- not the 16th?

15 A Yes. Actually, that's not true. I'm sorry.
16 The district letter says the spill occurred on the 16th.

17 Q Okay. And the district letter that corrected
18 it said that the resource that was affected was the Saddle
19 River?

20 A Yes.

21 MR. ADELMAN: Objection to the form.

22 Q And the resource affected there, the Saddle
23 River, 390,000 gallons of waste water as a result of their
24 estimates --

25 MR. ADELMAN: Objection to form. Sorry.

1 - BRUCE A. BELL -

2 Q -- that flowed from the Saddle River pump
3 station, correct?

4 MR. ADELMAN: Objection to form.

5 A Let's clear up something. The spill report
6 said waste water, or the SSO, got to the Saddle River. As
7 I recall it didn't say 390,000 gallons got to the Saddle
8 River. They are two different animals. One is what was
9 estimated at a pump of station, it's pretty easy to
10 estimate because you have got a flow meter to deal with.
11 What spilled? It's not so easy to estimate what went into
12 the river, although people do it if they are there during
13 the spill. It inevitably is less. The question is how
14 much less.

15 Q But you are not going to say none of that got
16 to the river, are you?

17 A No, the district reported that it got to the
18 river. There is no reason they would report something that
19 wasn't good for them if it wasn't true, that I could think
20 of.

21 Q And that's not good for them when they are
22 saying that their sanitary sewer overflow is getting to a
23 water source, correct?

24 MR. ADELMAN: Objection to the form.

25 A It's much better for them to be able to say

1 - BRUCE A. BELL -

2 honestly that it never got there.

3 Q The next event at the Saddle River, I'm just
4 going to skip down and go by date. You have a spill on
5 April 17th at the Saddle River Road, Ramapo, beg your
6 pardon, one above that, you have the Hillside Avenue and it
7 says that the affected waterbody again there is the Saddle
8 River --

9 MR. ADELMAN: Objection to form.

10 Q -- is that correct, on April 15th?

11 A Yes.

12 Q And then in your corrected section or comment
13 section, you said that the volume was 12,000 gallons?

14 A Yes.

15 Q And, again, the date of the rainfall, the day
16 of the spill reported was .7, correct?

17 MR. ADELMAN: Objection to form.

18 A Yes.

19 Q And there was no modification to say that the
20 spill was actually the next day, correct?

21 MR. ADELMAN: Objection to form.

22 A I don't see one.

23 Q The next listed is 417 East Saddle River Road,
24 another spill. We don't know the volume. It just says
25 affected area by pump of station, correct?

- BRUCE A. BELL -

1
2 A Yes.

3 MR. ADELMAN: Objection to form.

4 A Yeah, I assume that the way we did this, we
5 couldn't find a district report either. Okay, go ahead.

6 Q Then we have a dry event listed, East Saddle
7 River Road. Affected waterbody, Saddle River?

8 MR. ADELMAN: Objection to form.

9 A Yes.

10 Q Now, it looks like we had spills on the 15th,
11 the 16th, the 17th, and the 18th of April 2007, correct?

12 MR. ADELMAN: Objection to form.

13 A Yes.

14 Q All in the vicinity of the Saddle River pump
15 station?

16 A Yes.

17 MR. ADELMAN: Objection to form.

18 A Yes.

19 Q And all, actually, almost all of them listing
20 the affected water source as being the Saddle River,
21 correct?

22 MR. ADELMAN: Objection to form.

23 A Almost all.

24 Q The next entry October 12th, 2007, you have
25 another spill, Saddle River pump station. It lists